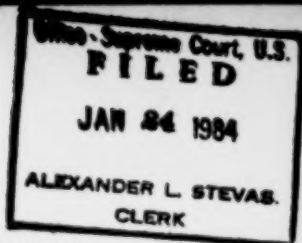


83-1291



IN THE  
SUPREME COURT OF THE UNITED STATES

\_\_\_\_\_  
Term, 19\_\_\_\_

\_\_\_\_\_  
No.  
\_\_\_\_\_

GEORGE A. SOLOMON,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.  
\_\_\_\_\_

PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT  
\_\_\_\_\_

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**REASONS RELIED UPON FOR ALLOWANCE OF  
THE WRIT**

I. Whether the search warrant used  
to seize Petitioner's financial  
records was supported by probable  
cause for its issuance?

II. Whether the search warrant used  
to seize Petitioner's financial  
records was a prohibited general  
warrant?

**PARTIES TO THIS PROCEEDING  
IN THE COURT BELOW**

This action, as filed in the United States Court of Appeals for the Third Circuit, was styled United States of America v. George A. Solomon, George T. Teslovich, and George M. Teslovich, Jr., George A. Solomon, Appellant, at No. 83-5312. Petitioner's co-defendants below filed separate appeals denominated as United States of America v. George R. Teslovich, No. 83-5313, and United States of America v. George M. Teslovich, Jr., No. 83-5339, which appeals were consolidated before the Third Circuit Court of Appeals on July 22, 1983.

## **TABLE OF CONTENTS**

	<b>PAGE</b>
Reasons Relied Upon For Allowance Of The Writ	1
Parties To This Proceeding In The Court Below	2
Table of Contents And Table Of Authorities	3-5
Opinions Below	6
Statement Of Jurisdiction	7
Constitutional Provisions Involved In This Case	8
Statement Of The Case	9-15
Reason Relied Upon For The Allowance Of The Writ	16-36
Conclusion	36
Certificate Of Service	37-38
Appendix:	
(1) Memorandum Opinion Of The Third Circuit Court Of Appeals Dated December 5, 1983	1a-5a
(2) Judgment of the Third Circuit Court Of Appeals	6a-7a

## TABLE OF CONTENTS

	PAGE
(3) Order Of The Third Circuit Court Of Appeals, Dated January 3, 1984, Staying Issuance Of The Mandate Until January 24, 1984	8a

## TABLE OF AUTHORITIES

### CASES

<u>Application of Lafayette Academy, Inc., 610 F.2d 1 (1st Cir., 1979)</u>	31,33,34
<u>Brineger v. United States, 338 U.S. 160 (1949)</u>	27
<u>Coolidge v. New Hampshire, 403 U.S. 433 (1971)</u>	33
<u>Illinois v. Gates, _____ U.S. _____, 103 S.Ct. 2317 (1983)</u>	22
<u>Sanford v. Texas, 379 U.S. 476 (1968)</u>	29,32
<u>United States v. Abrams, 615 F.2d 541 (1st Cir., 1980)</u>	30,31
<u>United States v. Bush, 647 F.2d 357 (3rd Cir., 1981)</u>	21
<u>United States v. Christine, 687 F.2d 749 (3rd Cir., 1982)</u>	35,36
<u>United States v. Harris, 403 U.S. 573 (1971)</u>	21

## TABLE OF AUTHORITIES

### CASES

	PAGE
<u>United States v. Johnson</u> , 690 F.2d 60 (3rd Cir. 1982), <u>cert. denied</u> 103 S.Ct. 1212 (1983)	33
<u>United States v. Moscow</u> , 588 F.2d 882 (3rd Cir., 1978)	11
<u>United States v. Rettig</u> , 589 F.2d 418 (9th Cir., 1978)	30
<u>United States v. Roche</u> , 614 F.2d 6 (1st Cir., 1980)	34
<u>United States v. Tamura</u> , 649 F.2d 591 (9th Cir., 1982)	29,36
<u>United States v. Zudick</u> , 523 F.2d 848 (3rd Cir., 1975)	11

### STATUTES

18 United States Code, Section 1962(c)	14,23,33
28 United States Code, Section 1254(1)	7

### CONSTITUTION OF THE UNITED STATES

United States Constitution, Amendment Four	8
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## **OPINIONS BELOW**

The United States Court of Appeals for the Third Circuit issued a Memorandum Opinion and Judgment on December 5, 1983. A copy of the Memorandum Opinion is contained in the Appendix at pp. 1a-5a. A copy of the Judgment is contained in the Appendix at pp. 6a-7a.

## **STATEMENT OF JURISDICTION**

The judgment of the United States Court of Appeals for the Third Circuit was entered on December 5, 1983. Petitioner did not submit a Petition for Rehearing. The jurisdiction of the Supreme Court of the United States is invoked under Title 28 United States Code Section 1254(1).



**CONSTITUTIONAL PROVISIONS  
INVOLVED IN THIS CASE**

The Fourth Amendment to the Constitution  
of the United States provides:

The right of the people to be  
secure in their persons, houses, papers,  
and effects, against unreasonable  
searches and seizures, shall not be  
violated, and no Warrants shall issue,  
but upon probable cause, supported by  
Oath or affirmation, and particularly  
describing the place to be searched,  
and the persons or things to be seized.

## STATEMENT OF THE CASE

### Procedural

This petition is before the Court from the denial of Petitioner, George A. Solomon's appeal, (hereinafter "Solomon"), from the Judgment of Sentence imposed by the trial court, and the upholding of the denial of his Motion to Suppress Evidence. Petitioner's appeal to the United States District Court for the Third Circuit was joined by Co-Defendants, George R. Teslovich and George M. Teslovich, Jr., each of whom filed a separate Brief on related issues. A Motion to Consolidate the appeals of the other two was granted by Order of the Third Circuit Court of Appeals dated July 22, 1983. All issues raised by the various Defendants were made applicable to the other defendants, and each Defendant adopted the arguments propounded by the others, where appropriate. George R. Teslovich has filed a separate petition for Writ of

Certiorari to this Court. George M. Teslovich Jr. did not file a petition.<sup>1</sup>

Each of the Defendants was charged in the same multi-count Indictment in the Western District of Pennsylvania, alleging various income tax violations of 26 U.S. Code with respect to the operation of Solomon & Teslovich, Inc., a contracting and trucking company, in Masontown, Pennsylvania, twenty (20) miles from Pittsburgh, (hereinafter "S&T"), in which each Defendant was a principal shareholder. The Defendants filed a Motion to Suppress the use of numerous records seized by the FBI, which served to make out the tax charges in the indictment. Judge Donald Ziegler denied Solomon's Motion to Suppress by transcribed

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1. Petitioner intends to join with George R. Teslovich in filing a motion for joint consideration of their respective petitions pursuant to Rule 42 of the Supreme Court Rules.

opinion dated January 19, 1983. (See Petitioner's Appendix to his Third Circuit Brief, 37a-39a), (hereinafter "Brief App"). Thereafter, and based on a plea agreement entered into between the prosecution and the various Defendants, Solomon entered a conditional plea of guilty to three counts of the Indictment, in accordance with the teachings of United States v. Moscow, 588 F.2d 882 (3rd. Cir. 1978) and United States v. Zudick, 523 F.2d 848 (3rd. Cir. 1975). On April 22, 1983 the Court sentenced Solomon to seven (7) years imprisonment, a Ten Thousand Dollar (\$10,000.00) fine and five (5) years probation.

Petitioner filed a Notice of Appeal to the Third Circuit Court of Appeals on April 27, 1983. On December 5, 1983, the Third Circuit Court of Appeals filed a Memorandum Opinion and Judgement denying Petitioner's Appeal, (Appendix, pp. 1a-7a).

Petitioner filed a Motion to the Third Circuit Court of Appeals on December 16, 1983 to stay the mandate pending this application to the Supreme Court of the United States for a Writ of Certiorari.

On January 3, 1984, the Third Circuit Court of Appeals entered an Order staying the mandate herein until January 24, 1984.

#### Background

The investigation giving rise to the Indictment arose out of events commencing in July, 1979 when Henrietta Foster, (hereinafter "Foster"), an employee of Suncrest Environmental Resources Corporation, (hereinafter "SERC"), a small Pennsylvania corporation, wholly unrelated to S&T, turned over photocopies of certain documents to the FBI which had been given to her by Phillip Gaziano, (hereinafter "Gaziano"), her then employer and President-Owner of SERC. (Transcript of

Pretrial Motions, 165), (hereinafter "HT"). These records were photocopied by the FBI and returned to Foster, who returned them to Gaziano the next day. It was stipulated by the Government and Defendants that these records were either destroyed by Gaziano or that, in any event, the Government possessed no information that these records were ever returned to S&T from whom they had allegedly taken (Brief App., 5a).

On December 17, 1979, FBI Special Agent Richard R. Geitgey, (hereinafter "Geitgey"), applied for an Affidavit for Search Warrant for S&T headquarters.

Geitgey's testimony disclosed that Magistrate Mitchell declined to issue the Warrant on December 17, 1979 because of insufficient probable cause, but did, in fact, issue the Warrant on December 18, 1979 on the strength of a revised Affidavit and Appendix A, which contained an analysis of seventy-

two (72) pages of the Foster records prepared by Geitgey (HT, 201, 229; Brief App, 48a).

The Warrant and eight (8) pages of the Appendix, but not the Affidavit were given to agents executing the Warrant.

The search resulted in the seizure of fifty-two (52) boxes or containers of S&T books, records and other documents dating from 1975 through the date of the search, i.e. December 19, 1979. Although the Affidavit to the Warrant alleges presumed violations of 18 U.S.C. Section 1962 at S&T during the years 1976 and 1977, the Foster records, however, related only to events with respect to the year 1977, when they were allegedly removed from the S&T business premises by Gaziano.

To date, no prosecution for any 18 U.S.C. violation has been undertaken. The records seized in this raid provided the basis for the development

of evidence leading to the instant Indictment for  
tax evasion only.



**REASONS RELIED UPON FOR THE  
ALLOWANCE OF THE WRIT**

- I. THE COURT ERRED IN FINDING THAT THE SEARCH WARRANT USED TO SEIZE PETITIONER'S FINANCIAL RECORDS WAS SUPPORTED BY SUFFICIENT PROBABLE CAUSE FOR ITS ISSUANCE.

The Federal Magistrate who eventually issued the warrant, rejected the first Affidavit of Probable Cause submitted by Special Agent Geitgey (HT, 229). The Magistrate's ruling that the Affidavit failed to demonstrate probable cause forced Geitgey to prepare Appendix A to that Affidavit. Appendix A is an analysis of the records provided to the FBI by Henrietta Foster, an employee of SERC. Based on a reading of Appendix A in conjunction with the Affidavit, and after a night's reflection, the Magistrate then issued the warrant in issue (HT, 230). Presumably, Appendix A provided some, if not all, of the elements which the Magistrate

initially lacked to support a finding of probable cause. Since no testimony was taken by the Magistrate, the Government is held to those allegations set forth in the Affidavit and Appendix A only.

Neither a reading of Appendix A, nor a combined reading of the Affidavit and Appendix A makes out any probable cause.

A.

The Activities And Statements Of SERC Employees, Henrietta Foster And Phillip Gaziano, Contained In The Warrant Are Not Sufficiently Related To Alleged Solomon And Teslovich, Inc. Criminal Activities To Support A Finding Of Probable Cause.

Numerous paragraphs in the Affidavit purportedly containing statements of alleged probable cause are in fact wholly irrelevant to the affairs of S&T and/or Petitioner.

Paragraphs 3 and 4 of the Affidavit continue for more than a page, describing in great detail Foster's conduct while a SERC employee and secretary to Gaziano in connection with an alleged fraudulent scheme concerning SERC's sale of coal to the Hatfield Power Station in Western Pennsylvania. Paragraph 5 of the Affidavit continues with the description of this alleged criminal conduct with respect to SERC business affairs only (Brief App, 43a).

Neither Foster's nor Gaziano's described conduct was in any way related to S&T's or Petitioner's business affairs by any reasonable construction of the Affidavit.

Nevertheless, both the District and Circuit Courts associate SERC activities with those of S&T and Solomon by drawing on language in Paragraphs 6 and 7 of the Affidavit describing Gaziano as a former accountant handling accounts payable and

receivable for S&T until October of 1977<sup>2</sup>, followed by a reference to an article appearing in the Uniontown Morning Herald on October 1, 1978 in which Gaziano allegedly stated that,

"at S&T, under the direction of his father-in-law, George Teslovich, and particularly George Solomon, (the co-owners of S&T), he had learned every phase of the Company's operation". He stated that Solomon and Teslovich were "great teachers".

The District and Circuit Courts extrapolated these references into the equivalent of Gaziano's actual participation in alleged wrongdoing at S&T, justifying a search of its premises, even though Gaziano no longer worked there.

The District Court's denial of the Motion to Suppress and the Circuit Court's affirmance relied

- 
2. The Trial Court, in its Opinion, incorrectly indicates that Gaziano was an accountant for S&T until November, 1977. The Affidavit indicates only until October (Brief App, 13a et seq, 44a).

almost exclusively upon information supplied by Foster, as set out in the Affidavit.

But the Affidavit and Appendix demonstrate that: (1) Foster was not an S&T employee; (2) Foster participated in no alleged criminal conduct at S&T; (3) Foster had no firsthand knowledge about alleged criminal activity at S&T; (4) Gaziano made no admissions against his penal interests; (5) Gaziano indicated no personal criminal involvement in affairs at S&T; and (6) Foster made no statements against her own penal interests.<sup>3</sup>

In affirming, the Third Circuit has not followed its own teachings expressed in United

- 
3. The District Court indicated that since Foster had "received stolen property and knowingly concealed a possible federal Federal crime" (at SERC) that Foster's statements might be construed as against her penal interests. (Brief App, 16a, Finding 9; 44a, Paragraph 7). But even if so, we submit, the Affidavit is not rescued, since Foster speaks only to events at SERC, not S&T to which the Warrant relates.

States v. Bush, 647 F.2d 357 (3d Cir., 1981) where it said:

A legitimate basis of knowledge means in general that the informant either directly observed the critical facts or that he obtained those facts directly from one of the participants in the criminal enterprise who, by revealing those facts, made an admission against penal interest. See, United States v. Harris, 403 U.S. 573 (1971).

Id., F.N. 5 (emphasis supplied).

While this Court in Harris, supra, indicated that a basis of legitimate knowledge could be inferred when an informant obtains information from an actual participant in the criminal enterprise who himself makes an admission against penal interest, that is simply not the situation here. Plainly, Foster (the informant) did not "directly observe the critical facts" at S&T, nor did she obtain the information from "one of the participants" in the S&T matters.

Furthermore, nowhere in the records or otherwise as set out in the Affidavit is there any indication or acknowledgment of any wrong doing by Gaziano with regard to S&T's business transactions to which the records in the Warrant purportedly related. Gaziano's statement that the Foster records were "hot" is hardly the equivalent of indicating that he participated in some criminal action with respect to them (Brief App, 13a, Paragraph 7F). The Magistrate presumably reached the same conclusion in denying the first application for the Warrant.<sup>4</sup>

- 
4. In affirming, the Circuit Court relied on this Court's recent decision in Illinois v. Gates, \_\_\_ U.S. \_\_\_, 103 S.Ct. 2317 (1983) to support a finding of probable cause for the instant Warrant (App., 3a). Petitioner contends that the Circuit misapplied the "totality of the circumstances" test adopted by this Court in Gates, since a fair review of these facts demonstrates no probable cause under the circumstances.

B.

The Alleged 1977 Work Papers Produced By Foster In July, 1979 Were Not Typical S&T Business Records And Can Not Support A Finding Of Probable Cause For the Issuance Of A Search Warrant.

Throughout the approximately seven pages comprising Appendix A, prepared by Agent Geitgey, numerous references are made to certain accounting work papers purportedly reflecting S&T business. The District and Circuit Courts apparently maintained that the various notations contained on these 1977 "work papers" provide probable cause to believe that evidence of 18 U.S.C. 1962(c) violations by Solomon would be found on the S&T premises



on December 19, 1979, over two years later.<sup>5</sup>

Appendix A to the Affidavit apparently persuaded the Magistrate to issue the Warrant on the second application.

Paragraph 10A of the Affidavit itself contains the following gratuitous conclusions by the affiant:

"Notations along the check stubs, as well as notations on separate ledger sheets indicated that although one payee was named on the check, disbursements in the amount of the check were not made to the payee, but rather were made to individuals identified by name or initials on the check stub or separate ledger sheet.

Paragraph 11 then summarizes various names or initials purportedly appearing on the ledger sheet and/or check stubs supplied by Foster. While

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5. The issue of warrant staleness will be presented to the Court by the Certiorari Petition of George Teslovich Sr., Petitioner Solomon's co-defendant. The Solomon and Teslovich petitions will be moved for consolidated consideration of issues. (See Footnote 1, supra.)

Paragraphs 12 through 15 attempt to link the various names and/or initials described in Paragraph 11 with certain entities with whom S&T and Solomon do business, neither the Affidavit nor Appendix A recite a single instance in which the named payee did not, in fact, receive payment.<sup>6</sup>

Moreover, the Affidavit and Appendix A similarly fail to recite a single instance in which an individual whose name and/or purported initials appeared in notations on the ledger sheets or check stubs, or who did, in fact, receive payments corresponding to those notations. Nor do the affidavit and appendix indicate that any payments described on the ledger sheets or check stubs were funded by monies otherwise identified with an incorrectly named payee.

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6. FBI Agent Geitgey testified that he did not check with third parties because of fear of compromising his investigation (HT 232).

Significantly, the "work papers" described in Appendix A are not identified, in fact, as business papers of the type maintained in the ordinary course of business of either S&T or Solomon. In fact, they are not typical of corporate type records such as invoices and ledgers. Moreover, the Affidavit fails to identify the source and/or author of these "work papers".

The failure of Appendix A to relate these 1977 documents to the daily business affairs of S&T and/or Solomon hardly suggests that such "work papers", or those of similar ilk, or indeed, any other type of corporate papers, would be at S&T offices on the day of the issuance of the warrant, i.e. December 18, 1979, over two (2) years later.<sup>7</sup>

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7. Agent Geitgey analyzed documents relating to 1977 only, although the Warrant sought and the agents seized 1975, 1976 as well as records up to the date of seizure on December 18, 1979. (HT 275).

Neither the Affidavit nor Appendix A corroborate the representation that these work papers related to S&T business activities of an ongoing kind. Thus, inferences drawn from either the work papers or any other document received from Foster, rise only to the level of suspicion and cannot support a finding of probable cause for the issuance of a search warrant. See, Brineger v. United States, 338 U.S. 160, 175.

II. THE SEARCH WARRANT  
WAS A PROHIBITED  
GENERAL WARRANT.

The items sought pursuant to the Warrant  
included:

Business records located at Solomon  
& Teslovich, Inc. and which pertain to  
the business activities from January  
1, 1975 to present of Solomon &  
Teslovich, Inc. but limited to all cash  
receipt and disbursement journals and  
ledgers, checks, wire transfers, books  
of account; in addition thereto any  
other writing pertaining to Solomon &  
Teslovich, Inc. which reflect payments  
to employees or agents of unions,  
United States Steel, PennDot or other  
business or governmental entities.

The language in this Warrant is overbroad,  
and is therefore a General Warrant, in violation of  
the Fourth Amendment. This Court has said that  
the standard for judging the probable cause  
allegations of a warrant is "whether the description  
. . . is sufficient to enable the officer armed with  
it to ascertain and identify with reasonable effort  
the place to be searched and the things to be

seized." Sanford v. Texas, 379 U.S. 476 (1968)  
(emphasis supplied).

We note first the the warrant seeks records beyond any periods of time expressed or implied in the Probable Cause Affidavit and Appendix.<sup>8</sup>

Second, the Search Warrant lacks the requisite particularity which this Court requires. See Sanford, id.

Endeavoring to uphold the Sanford standard, the Ninth Circuit has ruled that only items which a warrant specifically enumerates may be seized. United States v. Tamura, 649 F.2d 591 (9th Cir., 1982). In so holding, the Tamura court recognized that seizure of large quantities of records, as here,

- 
8. The Warrant approves seizure of items from January 1, 1975 to December 18, 1979. Probable cause allegations relate to much more narrow time frames, including May 25, 1977 to October 28, 1977 and July-December, 1979 only. Petitioner Teslovich will address the issue of staleness presented by this chronology.

created a danger of overstepping the warrant's authority. Id., at 595, citing United States v. Abrams, 615 F.2d 541, 543 (1st Cir., 1980). See also, United States v. Rettig, 589 F.2d 418 (9th Cir., 1978).

The First Circuit has also proscribed the use of warrants which, by their language, tend to give police officers unfettered discretion as to which items they will seize. In condemning the use of a warrant which authorized a general seizure of a doctor's Medicare records, that Circuit said:

The warrant at issue fails to meet the requirement of particularity. The officers' discretion was unfettered, there is no limitation as to time, and there is no description as to what specific records are to be seized. . . . It seems clear that the executing officers could not or made no attempt to distinguish bona fide records from fraudulent ones so they seized all of them in order that a detailed examination could be made later. That is exactly the kind of investigatory dragnet that the fourth amendment was designed to prevent.

Abrams, supra at 615 F.2d 541 (1st Cir., 1980).

At the same time, Abrams rejected any relaxation of these requirements because of exigent circumstances where,

There was a four year investigation here. The warrant was not drafted under conditions of exigency. There was no reason for the magistrate to act in haste. The government should have known exactly what records it wanted and there was ample time to draft a warrant that would meet the requirements of the fourth amendment and avoid the proscription against generality.

Id., at 667, n. 5. See also, Application of Lafayette Academy, Inc., 610 F.2d 1 (1st Cir., 1979) (items to be seized must be specifically described for the benefit of those subject to search). Ample time also existed in the matter sub judice to craft a more precise warrant.

Nevertheless, in affirming, the Third Circuit misapplied these principles, all derived from this



Court's teachings in a long line of decisions, including Sanford, supra.

First, as the supervising case agent on the raid testified, none of the agents who executed the Warrant was given the Affidavit, nor more than eight (8) pages of the seventy-two (72) page Attachment A. Thus, none had full guidance in limiting his search (HT, 324). Indeed, the breadth of the Warrant and its inclusiveness from 1975 through 1979, as well as its demand for all S&T records dealing with various entities, prompted the agents to take over fifty-two (52) boxes and containers of records.

As the Motion to Suppress testimony shows, practically no independent judgment was made by the Agents with respect to what to take. As a consequence, wholesale seizure of unrelated items occurred, including seizure of Solomon's personal tax returns, his wife's rental property books, and

numerous other documents having no connection with S&T and 18 U.S.C. Section 1962 violations. (See Inventory to Search Warrant).

The Third Circuit itself recently spoke to this question of general warrants in United States v. Johnson, 690 F.2d 60 (3rd Cir., 1982) cert denied, 103 S.Ct. 1212 (1983), in a split decision, with two concurring and one dissenting opinion. Quoting time honored principles expressed by this Court in Coolidge v. New Hampshire, 403 U.S. 433, 467 (1971) the Circuit said:

Although the general rule is that a particularized affidavit cannot be used to cure a general warrant, there is a recognized exception which applies in this case. When a warrant is accompanied by an affidavit that is incorporated by reference, the affidavit may be used in construing the scope of the warrant. Application of Lafayette Academy, Inc., 610 F.2d 1, 4 (1st Cir. 1979).

Johnson, supra at 64.

But, the First Circuit, construing Lafayette, supra in United States v. Roche, 614 F.2d 6 (1st Cir. 1980), held that an affidavit may be used to construe the scope of a warrant only when the affidavit accompanies the warrant, and where the warrant uses appropriate words of reference to incorporate the affidavit. Id. at 8.

The Roche court explained that requiring that the affidavit accompany the warrant circumscribes the discretion of the executing officer and informs the person subject to the search of the permissible scope of the warrant. Id.

For this very reason the search warrant at issue here cannot be saved by representations contained in the Affidavit and/or Attachment A, since neither was part of the actual warrant as used by the agents executing it, nor were they made available to the person (Solomon and S&T) made subject to the search.

Petitioner is aware that where, as here, an overbroad general warrant is employed, redaction of the improper phrases and clauses may be appropriate. United States v. Christine, 687 F.2d 749 (3rd Cir. 1982).

Nevertheless, applying the Christine rationale, if the description "from January 1, 1975 to present" is redacted from the instant warrant because the statements of alleged probable cause relate only to the period of time between May 15, 1977 and October 28, 1977, the remaining description of items to be seized in the warrant lacks the requisite particularity demanded by the Fourth Amendment, since a thus purged warrant attempts to reach all of S&T's records of income and expense for an otherwise unspecified period.

We dare say, it is doubtful that this would leave any records unseized and in actual implementation that is precisely what occurred.

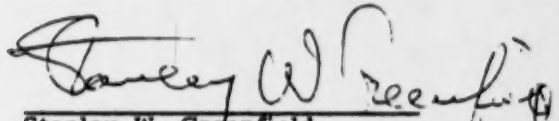
Since no meaningful portion of the warrant would remain after Christine redaction, the appropriate sanction is suppression of all evidence seized pursuant to the generalized warrant. See also United States v. Tamura, 694 F.2d 591 (9th Cir. 1982).

### CONCLUSION

For the reasons set forth herein, it is respectfully submitted that this Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit should be granted.

Respectfully submitted,

GREENFIELD & MURTAGH

  
Stanley W. Greenfield,  
Attorney for Petitioner,  
George A. Solomon

## CERTIFICATE OF SERVICE

COMMONWEALTH OF PENNSYLVANIA )  
 ) SS:  
COUNTY OF ALLEGHENY )

I hereby certify that on the 23<sup>rd</sup> day of January, 1984, three (3) true and correct copies of the foregoing PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, were served on each of the individuals and in the manner indicated below, which service satisfies the requirements of Rule 28 of the United States Supreme Court Rules.

**SERVICE BY FIRST CLASS, UNITED STATES MAIL, POSTAGE PREPAID:**

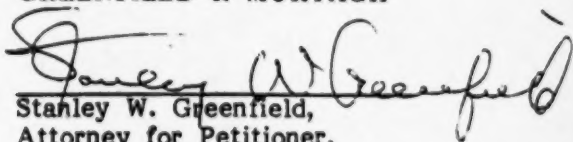
1. Rex E. Lee  
SOLICITOR GENERAL  
United States Department of Justice  
Room 5143  
Main Justice Building  
Washington, D.C. 20530

2. Paul J. Brysh, Esquire  
Assistant United States Attorney  
Western District of Pennsylvania  
633 U. S. Post Office and Courthouse  
Seventh Avenue and Grant Street  
Pittsburgh, Pennsylvania 15219

3. Counsel for George R. Teslovich:

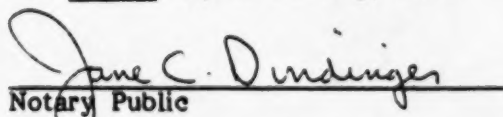
Frederick D. Fahrenz, Esquire  
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GREENFIELD & MURTAGH

  
Stanley W. Greenfield,  
Attorney for Petitioner,  
Geroge A. Solomon

SWORN to and subscribed before me

this 23<sup>rd</sup> day of January, 1984.

  
Notary Public

My Commission Expires:

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

---

Nos. 83-5312/13 and 83-5339

---

UNITED STATES OF AMERICA

v.

GEORGE A. SOLOMON,  
Appellant in No. 83-5312

GEORGE M. TESLOVICH, JR.,  
Appellant in No. 83-5313

GEORGE R. TESLOVICH,  
Appellant in No. 83-5339

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ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA

---

(D.C. Criminal Nos. 82-00171-01/03/02)  
District Judge: Hon. Donald E. Ziegler

Submitted Under Third Circuit Rule 12(6)  
December 2, 1983

Before: GIBBONS and SLOVITER,  
Circuit Judges  
and GREEN, District Judge\*  
(Filed: Dec 5 1983)

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\*Hon. Clifford Scott Green, United States District  
Judge for the Eastern District of Pennsylvania,  
sitting by designation.



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MEMORANDUM OPINION OF THE COURT

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GIBBONS, Circuit Judge

George A. Solomon, George R. Teslovich and George M. Teslovich, Jr. pled guilty to charges of income tax evasion, reserving the right to appeal from the denial of their motion to suppress evidence. See United States v. Moskow, 588 F.2d 882, 885-90 (3d Cir. 1978). They contend that the books and records seized from the office of Solomon & Teslovich, Inc. on December 19, 1979 should have been suppressed.

The affidavit used in applying for the search warrant relied on information contained in a package of records in the possession of Henrietta Foster, which she was holding for Philip Gaziano. The appellants contend that opening the package and the records was a warrantless search in violation of the fourth amendment. Only Gaziano

had any expectation of privacy in the package. See Rakas v. Illinois, 439 U.S. 128, 132-49 (1978).

Appellants contend that the affidavit was legally insufficient in establishing probable cause for the issuance of a warrant. We have examined it in light of the governing standards announced in Illinois v. Gates, U.S. , 103 S. Ct. 2317, 2332 (1983), and find it to be adequate.

Appellants contend that the warrant was insufficiently specific to limit the books and records subject to seizure. See United States v. Johnson, 690 F.2d 60, 63-66 (3d Cir. 1982), cert. denied, 103 S. Ct. 1212 (1983); see United States v. Christine, 687 F.2d 749, 752-53 (3d Cir. 1982). Adequacy of the description depends on the nature of the suspected criminal activity, the nature of the items to be seized, and the difficulty of specifying volumes of records covering an extended period. In this case the warrant authorized the seizure of

business records located at Solomon & Teslovich Inc. and which pertain to the business activities from Jan. 1, 1975 to present of Solomon & Teslovich, Inc. but limited to all cash receipt and disbursement journals and ledgers, checks, wire transfers, books of account; in addition thereto any other writings pertaining to Solomon and Teslovich, Inc. which reflect payments to employees or agents of unions, United States Steel, PennDot or other business or governmental entities.

The warrant identified certain documents — journals, ledgers, checks, wire transfers, and books of account — by type, and qualified "any other writings" as pertaining to payments to persons or entities with whom Solomon and Teslovich dealt. Under these circumstances, we conclude that the warrant was sufficiently specific.

Appellants contend that the seizure of work papers prepared by an independent accountant, Frank Lucas, from a separate office, for which Lucas had a key, and in which he kept work papers about other clients, was beyond the scope of the

warrant, and violated the fourth amendment. Appellants had no property interest in the work papers and no expectation of privacy with respect to them. See Rakas v. Illinois, 439 U.S. 128, 132-49 (1978).

Finally, appellants contend that the agents who made the seizure failed to file an inventory satisfying Fed. R. Crim. P. 41. We find no prejudice flowing from any such failure, and therefore no ground for suppressing evidence. See United States v. Hall, 505 F.2d 961, 964 (3d Cir. 1974).

The judgment of sentence will, therefore, be affirmed.

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TO THE CLERK OF THE COURT:

Kindly file the foregoing Opinion.

/s/ John J. Gibbons  
Circuit Judge

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

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Nos. 83-5312/13 and 83-5339

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UNITED STATES OF AMERICA

v.

GEORGE A. SOLOMON,  
Appellant in No. 83-5312

GEORGE M. TESLOVICH, JR.,  
Appellant in No. 83-5313

GEORGE R. TESLOVICH,  
Appellant in No. 83-5339

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ON APPEAL FROM THE UNITED STATES  
DISTRICT COURT FOR THE  
WESTERN DISTRICT OF PENNSYLVANIA

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(D.C. Criminal Nos. 82-00171-01/03/02  
District Judge: Hon. Donald E. Ziegler

Before: GIBBONS and SLOVITER,  
Circuit Judges  
and GREEN, District Judge

(Filed: Dec 5 1983)

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JUDGMENT

These causes came on to be heard on the  
record from the United States District Court for the

Western District of Pennsylvania and were submitted under Third Circuit Rule 12(6) on December 2, 1983.

On consideration hereof, it is now here ordered and adjudged by this Court that the judgments of the said District Court entered April 20, 1983 in Criminal No. 82-171-03, entered on April 22, 1983 in Criminal No. 82-171-01, and entered on April 28, 1983 in Criminal No. 82-171-02, appealed here respectively, be and the same are, hereby affirmed.

/s/N. Elizabeth Ferguson  
N. Elizabeth Ferguson,  
Deputy Clerk

Dated: December 5, 1983

UNITED STATES COURT OF APPEALS  
FOR THE THIRD CIRCUIT

No. 83-5312

UNITED STATES OF AMERICA  
vs.  
GEORGE A. SOLOMON, Appellant

Pursuant to Rule 41(b) of the Federal Rules  
of Appellate Procedure, it is O R D E R E D  
that issuance of the certified judgment in lieu of  
formal mandate in the above cause be, and it is  
hereby stayed until January 24, 1984.

/s/ Aldisert  
Circuit Judge

Dated: Jan. 3 1984